

FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Subsections 3375.2 and 3377.1 of the California Code of Regulations (CCR), Title 15, Division 3, concerning inmate custody designations. The primary objective of this amendment is to ensure the safety of the public, inmates, and correctional personnel. The purpose for affixing the “R” suffix to an inmate’s custody designation is to assist staff in identifying inmates with a history of specific sex offenses and to limit the inmate’s opportunity to escape or to re-offend while in custody.

The sex offenses which require an “R” suffix designation have not been updated since 1987. Amendments to the regulations are proposed to standardize the application of the “R” suffix custody designation with Penal Code (PC) Section 290, Sex Offender – Registration Requirement. This amendment will correlate the Department’s regulations for applying an “R” suffix to an inmate’s custody, to the PC requirement that convicted felons guilty of specific offenses must register as a sex offender for life.

Current regulatory language allows some sex offenders with court-imposed PC Section 290 registration requirements to be housed in a minimum custody setting and to be placed in work assignments that puts him/her in direct contact with the public. Additionally, current regulatory language is ambiguous and leaves too much open to interpretation. As such, it is driving unnecessary classification actions for Institutional Classification Committees and the Departmental Review Board.

New language provides guidelines when an “R” suffix should be applied during Reception Center processing; establishes and clarifies the process to complete an “R” suffix evaluation; and clarifies the responsibilities of the different classification committees as it pertains to affixing an “R” suffix. Additionally, new language has been added to provide for inmates who have been found guilty in a disciplinary hearing of a Division A-1, A-2, or B offense that is equivalent to a PC Section 290 offense shall have an “R” Suffix evaluation.

These regulations also include additional changes that have been made to the originally proposed text to provide clarity and proper punctuation.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department’s initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or

private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

Subsection 3375.2(a) through 3375.2(a)(1) remain unchanged.

Subsection 3375.2(a)(2) is amended to bring the regulations into compliance with both the newly revised “R” Suffix regulations, and the Inmate Classification Score System regulations that give an inmate that has been assigned an “R” Suffix a mandatory minimum score of 19 classification points.

Subsections 3377.1(a) through 3377.1(a)(9)(C) remain unchanged.

Subsections 3377.1(b) through 3377.1(b)(1)(D) are amended to clarify that any inmate who has a history of specific sex offenses, as detailed in PC Section 290, shall have an “R” suffix affixed to his/her custody designation to ensure the general safety. Additionally, the “R” suffix shall be affixed during reception center processing if one of several criteria apply: the inmate is required to register per PC Section 290; the inmate’s parole was revoked or they sustained an adjudication of an offense that is equivalent to an offense listed in PC Section 290; the inmate had a valid “R” suffix evaluation as defined later in this subsection resulting in the “R” suffix being affixed. Additional changes were made to several subsections to provide clarity and correct punctuation. Specifically, subsections 3371.1(b) (1) (B) and (C) have had commas added to separately identify the names of the former divisions being discussed.

Subsections 3377.1(b)(1)(E) through 3377.1(b)(1)(K) are deleted as the type and number of sexual offenses detailed in PC Section 290 for which an “R” Suffix would be affixed by a classification committee has been enumerated and therefore, need not be specifically repeated in this regulation.

Subsection 3377.1(b)(2) is amended to specify that not all “R” suffix evaluations were conducted in accordance with the former Subsection 3377.1(b)(2). Therefore, if an inmate does not currently meet the criteria for automatic application of the “R” suffix pursuant to Subsections 3377.1(b)(1)(A) through (b)(1)(D), the “R” suffix shall not be applied and the receiving institution shall complete a re-evaluation.

Subsection 3377(b)(3) is amended to clarify that the Department will complete an “R” suffix evaluation within six months of an inmate’s reception. As it is not always possible to receive the required documentation within that six months, the “R” suffix evaluation may need to be completed at a later time during incarceration. Also, classification committees shall consider the arrest reports and district attorney’s comments related to each arrest when completing an “R” suffix evaluation.

Subsection 3377.1(b)(3)(A) is newly adopted to establish that guilty findings of division A-1, A-2, or B offenses that are equivalent to an offense listed in PC Section 290 are required to have an “R” suffix evaluation by a classification committee.

Subsection 3377.1(b)(4) is amended to specify that an “R” suffix can be applied at any institution if it is determined the inmate meets one of the criteria set forth in Subsection 3377.1(b)(1).

Subsection 3377.1(b)(5) is amended to clarify what reports are needed in the “R” suffix evaluation process and the documentation required as to the efforts taken to obtain such documentation.

Subsections 3377.1(b)(5)(A) through 3377.1(b)(5)(B) are newly adopted to stipulate that an “R” suffix cannot be affixed if the requisite documentation is unavailable. Also, it allows the classification committee to utilize the District Attorney’s comments, Probation Officer’s Report, Minute Order, or any other official document when the arrest report is unavailable. If none of the relevant documents are available, the classification committee may file for Departmental Review Board approval if it has some indication that an “R” suffix is appropriate.

Subsections 3377.1(b)(6) through 3371.1(b)(13)(B) are newly adopted to provide detail to such items as to when an “R” suffix may be removed, when or why to refer a case to a higher level committee, when not to apply an “R” suffix, where inmates may be housed if they have an “R” suffix designation, what a Certificate of Rehabilitation can accomplish, housing eligibility when an “R” suffix is removed, and several miscellaneous definitions.

Subsection 3377.1(c) remains unchanged.

PUBLIC COMMENTS:

Public Hearing: Held June 29, 2006, at 11:00 at the Department of Water Resources Auditorium, Sacramento.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

There were no commenters present at the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

COMMENTER #1:

Comment A: Commenter states that after six years of incarceration, he was called before a classification committee which assigned him an “R” suffix custody designation. Commenter further contends that this custody designation is inappropriate as he has never been convicted of a sex crime either prior to or during his incarceration, and as it imposes undue visiting restrictions regarding minors and is causing him safety concerns.

Accommodation: None.

Response A: The Department utilizes a complex classification system to determine each inmate’s individual custody, program, and security needs, and to identify, for example, those inmates that have a history of specific sex offenses. An “R” suffix custody designation can be affixed only after careful review and consideration of an inmates case factors and central file. In some instances information may be received by the Department a number of years after an inmate’s incarceration, such as an arrest report that may not have resulted in a conviction. The Department will not intentionally affix an inappropriate custody designation on an inmate where there is no cause, although current policy does allow for a more subjective determination as to whether such a custody designation is appropriate. As such, one positive aspect of this regulatory change is that the criteria to affix the “R” suffix are now more consistent and objective; the application of the “R” suffix will now be consistent with the Penal Code (PC), Section 290, registration requirement. If an inmate feels that any aspect of a classification committee’s decision is in error, that inmate is encouraged to utilize the inmate appeal system for further review at different levels within the Department. Also, the Department intends for this regulation to strike the appropriate balance between safe and healthy visitation and the protection of minors in a correctional setting. The Department seeks

to standardize processes concerning visiting restrictions with minors that were formerly subject to local interpretation. At the same time, it supports the safety of all persons including visiting minors and will ensure the legitimate penological interests of maintaining the safety and security of the institutions. The Department is well aware of the potential safety ramifications of affixing such a custody designation. Inmates should not provide other inmates with information regarding their custody designations; staff treat this information as confidential and do not reveal such information to other inmates.

Commenter #2:

Comment A: Commenter states that this classification change will increase the number of inmates with an “R” suffix custody designation by thousands, and will correspondingly increase the level of violence on the prison yards. Inmates with this custody designation will have to be housed together on their own yards.

Accommodation: None.

Response A: The Department contends that this revision brings the application of the “R” suffix in line with the court’s view on sex crimes by correlating the “R” suffix to the Penal Code (PC), Section 290, registration requirement. Current policy and regulations allow for inmates with court-imposed PC Section 290 registration requirements to be housed in a minimum custody setting, and to be placed in work assignments that put them in direct contact with the public. Also, the current policy and regulations are ambiguous and leave much open to subjective interpretation. One positive aspect of this regulatory change is that the criteria to affix the “R” suffix are now more consistent and objective.

By using PC 290 as the basis by which to affix the “R” suffix, the number of inmates that will have the “R” suffix designation will increase. The current regulations only list eleven sex-related offenses that would require the “R” suffix. The new regulations would increase the sex-related offenses that would require the “R” suffix to thirty-six. An inmate that has an “R” suffix based on PC 290 registration requirements has those requirements detailed on numerous court and Department related documents. Also, an inmate’s entire criminal history is detailed on Department forms. Inmates are aware, and have been for years, that PC 290 registration requirements and an “R” suffix indicate an inmate has been convicted of a sex-related crime.

The Department disagrees that an increase in the number of inmates with an “R” suffix will result in an increase of violence on prison yards. Inmates with an “R” suffix custody designation have existed in all prison yards for years, and rarely have been singled out for violence because of that designation. The information relied upon to affix an “R” suffix is already in an inmate’s documentation; whether or not an inmate has an “R” suffix would typically not be the primary or only reason an inmate would be assaulted. The Department’s primary responsibility is to maintain safety and security for all. The Department is very careful to maintain the highest level of positive and appropriate inmate discipline possible. The Department contends that the “R” suffix custody designation has been in existence for years, and the Department has not had to create special yards just for inmates with this designation.

Comment B: Commenter states that many inmates have families to return to upon their release from prison, and with far more of them having to register as sex offenders, the job of raising their children will be far more difficult.

Accommodation: None.

Response B: The Department agrees. It may be difficult to raise a family if a former inmate must register as a sex offender. However, the Department contends that conforming these

regulations, and standardizing the application of the “R” suffix custody designation with PC 290 in order to conform to changes occurring in the law regarding individuals that need to register as sex offenders, is long overdue. There has been an increased interest in society of the need to identify those individuals that have a history of sexual offenses, which has translated to increased reporting and registration requirements imposed by the state legislature. The Department is making every effort to comply with the intent and spirit of the law.

Comment C: Commenter expressed concern as to just which additional inmates would be considered to require an “R” suffix, all inmates with sex offenses, or just those with offenses that involve a minor. Regardless, even child molesters in prison have a right to be protected, and first time offenders that are child molesters are really mentally ill, or simply made a mistake.

Accommodation: None.

Response C: Inmates who are required to register as a sex offender pursuant to PC 290 shall have an “R” suffix custody designation. Inmates who are arrested, charged or detained for a sex-related offense listed in PC 290 shall have an “R” suffix evaluation conducted by a classification committee. Inmates who commit a sex-related offense in prison equivalent to a sex offense listed in PC 290 shall also have an “R” suffix evaluation conducted by a classification committee. The “R” suffix custody designation is not intended to provide additional punishment, but to ensure the safety of the public, other inmates, and staff.

The Department evaluates inmates on an ongoing basis as to their mental health needs. Following a federal court trial, the court in September 1995 found the Department deliberately indifferent to the mental health needs of inmates in violation of the Eighth Amendment. In 1997, the Department proposed, and the court approved, a plan including programs and staff designed to address constitutional inadequacies by establishing mental health services at different levels of care. The CDCR Mental Health Services Delivery System (MHSDS) draft Coleman agreement establishes the following in the “Program Goals and Objectives:”

- Continuation of care for inmate-patients with identified mental health treatment needs through regular case management activities and medication monitoring to enable inmate-patients to maintain adequate levels of functioning and avoid decompensation.
- Daily clinical rounds of inmate-patients in the MHSDS and mental health screening and evaluation of inmates who are not currently in the MHSDS caseload to identify mental health needs.
- Referral to a more intensive level of care for inmate-patients whose mental health needs cannot be met in segregated housing, including expeditious placement into Mental Health Crisis Beds (MHCB) for inmate-patients requiring inpatient mental health care.
- Mental health assessments and input into the classification decision-making process during committee, including the inmate-patient’s current participation in treatment, medication compliance, suitability of single celling or double celling, risk assessment of self-injurious or assaultive behavior, status of Activities of Daily Living, ability to understand Due Process proceedings, likelihood of decompensation if retained in segregated housing, recommendations for alternative placement, and any other custodial and clinical issues that have impact on inmate-patients’ mental health treatment.
- Mental health assessments and input into the adjudication of Rule Violation Report hearing proceedings involving MHSDS inmate-patients. Mental health information includes the quality of the inmate-patients’ participation in their current MHSDS treatment plan, mental

condition that may have been a contributing factor in the alleged misbehavior, and the ability to comprehend the nature of the charges or participate meaningfully in the disciplinary process. Final housing decisions are made by a classification committee after considering all relevant clinical and custody factors.

Per the Coleman training, custody staff know they must report unusual, bizarre, or uncharacteristic inmate behavior to MHSDS staff immediately. An inmate's mental and physical health will continue to be monitored and the appropriate measures taken as an inmate's treatment requires regardless of his/her housing, in keeping with the requirements of the Coleman agreement. As such, the Department is now well positioned to provide adequate and necessary care and treatment for mentally ill inmates.

Commenter #3:

Comment A: Commenter stated that some of the most irresponsible, pointless, and cruel treatment policies implemented by the Department via "Rules Changes" are designed to punish the mentally ill. Additionally, there is no rehabilitation of inmates occurring within the Department.

Accommodation: None.

Response A: The Department contends that any "Rules Change" that are promulgated in the Title 15, Division 3, must be properly amended, adopted, or deleted pursuant to the Administrative Procedure Act. The Department must notify any interested parties of the proposed rules change, conduct a public hearing, and receive comments and respond to them in a Final Statement of Reasons. A Certificate of Compliance must then be filed with the Office of Administrative Law, the regulation change then approved and permanently adopted, and finally filed with the Secretary of State. As such, there is a complex and formal process by which all interested parties to a "Rules Change", including an independent review of the proposed change by a state department other than the CDCR, may participate to achieve its successful culmination. It is unreasonable to anticipate that the process just described would purposefully allow the punishment of the mentally ill. With respect to the treatment of the mentally ill, see **Commenter #2, Response C**.

The Commenter is correct in noting that the Department has recently adopted an increased emphasis in rehabilitative programs such as increased education and vocational opportunities. Additionally, the Department has for a number of years placed a high emphasis on behavioral modification. The Department has required its staff to conduct themselves as professional correctional custodians, both custody staff and non-custody staff, by maintaining professional conduct on and off the work site, adhering to a strict dress and grooming code, completing required training, and disciplining those staff that do not conduct themselves as professionals. Beyond an emphasis on staff professionalism, one of the most important tools available to the Department to encourage an inmate to successfully program as they serve their sentence is the classification process. The classification process is an evidence based system designed to identify both risk factors and positive indicators in an inmate's background. This process starts at the reception center where a classification score is developed based on social factors and past behavior, either in prior incarcerations or behavior as noted in arrest records. If redeeming social factors are lacking, and an arrest record or documented behavior has been less than desirable, the classification score will be increased such that the inmate's prison placement will be in as secure a setting as necessary. It is then incumbent upon the inmate to conduct themselves such that their classification score can be reduced. This can be accomplished through successful programming in education, a job assignment, or a treatment program, and by being disciplinary free. Again, the Department has for many years

endeavored to provide the tools to encourage and guide inmates in a successful programming direction and to allow them to safely and harmoniously live together and complete their sentences.

Comment B: These changes are not made through the legislature, as Democrats would never cooperate with such inhumane and unlawful concepts.

Accommodation: None.

Response B: The Department disagrees. The Initial Statement of Reasons explains why this regulatory change is necessary and appropriate. The California Legislature, the majority of who were Democrats when PC 290 was last amended, reaffirmed the statutory authority for these proposed changes. The primary objective of the proposed changes is to ensure the safety of the public, inmates, and correctional personnel. The purpose for affixing the “R” suffix to an inmate’s custody designation is to assist staff in identifying inmates with a history of specific sex offenses and to limit the inmate’s opportunity to escape or to re-offend while in custody.

The sex offenses which require an “R” suffix designation have not changed since 1987. Amendments to the regulations are proposed to standardize the application of the “R” suffix custody designation with Penal Code (PC) Section 290, Sex Offender – Registration Requirement. This amendment will correlate the Department’s regulations for applying an “R” suffix to an inmate with the PC requirement that convicted felons guilty of specific offenses must register as a sex offender for life. The PC is comprised of laws that have been developed and debated by members of the Legislature, and then approved by a majority and signed by a Governor for inclusion into the PC. The role of the Legislature is to represent the people, and their interests. As the Commenter must be aware, there has been an increasing level of concern on the part of the people as to how best to curb repeat offenses by individuals with a history of sex offenses. As such, these regulatory changes are not reflective of inhumane and unlawful concepts, but rather represent the preference of the people of the state in dealing with sex offenders. The Department acknowledges that changes to these regulations should have in fact been enacted several years ago to be in compliance with the law.

Comment C: Commenter states that inmates are damaged when the Department files regulatory changes on an emergency basis, which is intentionally done so as to reduce public scrutiny.

Accommodation: None.

Response C: This regulation change was not filed on an emergency basis. The OAL maintains a narrow interpretation as to what qualifies as emergency rule-making, pursuant to the APA. Circumstances where it is essential that the Department file a regulatory change as an emergency rule-making usually arise from legislation, or litigation, where a significant change in the law or its interpretation occurs that impacts the operation of the Department, and where there is insufficient time with which to file a regular rule-making file. This regulation, however, was filed as a regular rule-making file.

The several thousand copies of “Notice to Change to Regulations” that are distributed statewide to announce a regulatory change contain as an attachment a notice to either adopt emergency regulations, or a notice of proposed regulations – a regular rule-making file. The “Notice of Change to Regulations” concerning inmate custody designations, issued May 5, 2006, contained as an attachment a “Notice of Proposed Regulations”, thereby indicating that

this particular regulatory change was a regular rule-making file. The public comment period extended nearly two months until June 29, 2006, which is well within APA guidelines to allow for sufficient time for public scrutiny and comment. The regulations proposed here will become effective after the public process is completed and certified.

Comment D: Commenter states that the Department knowingly utilizes complex language in its regulations designed to confuse anyone who would dare challenge their absurd rule changes. Additionally, the Department knowingly blocks the dissemination of what should be public information.

Accommodation: None.

Response D: The Department acknowledges that narrative language pertaining to the classification process can appear to be complex to individuals not directly affiliated with the Department. The Department contends, however, that as a rulemaking agency it endeavors to draft regulation text in plain, straightforward, coherent, and easily readable language, avoiding technical terms as much as possible, in order to conform to the performance goal of clarity pursuant to Government Code Section 11346.2(a)(1). In addition, the OAL has a duty to ensure that each regulation can be understood. The Department notes that this regulatory change is actually a revision to regulatory language that has previously been reviewed and approved by the OAL, and has thus met the performance goal of clarity.

The Department disagrees that it “knowingly blocks the dissemination” of public information regarding a regulatory change. The Regulation and Policy Management Branch (RPMB), a branch within the Department, is responsible for furnishing notices to the public regarding new regulations or changes to existing regulations proposed by the Department. RPMB utilizes two methods by which to announce a regulatory change. The electronic method, increasingly the more efficient method by which the public can access this information, is available via the internet at the Department’s website. The documents are in Portable Document Format for security reasons, and can be printed and then scanned into a computer to send to other interested parties, or faxed to interested parties. The documents that are posted to the internet are the NCR, the Notice of Proposed Regulations, the Initial Statement of Reasons, and the proposed text of the regulatory change. Alternatively, interested parties can also request to be placed on a mailing list to receive the same documents via mail. The posting of these documents on the internet, as well as the mailing list, are maintained by RPMB, and satisfy the public notification process in the APA.

Comment E: Commenter states that there are many non-violent sex offenders in prison, many of whom are mentally ill or not even guilty of an offense at all.

Accommodation: None.

Response E: The Department contends that while there may be non-violent sex offenders in the prison system, many sex offenders have committed violent crimes. It is not the Department’s intent, however, to discriminate by applying a specific custody designation to only one class of such offenders. The purpose for affixing the “R” suffix to an inmate’s custody designation is to assist staff in identifying inmates with a history of specific sex offenses, and to limit the inmate’s opportunity to escape or to re-offend while in custody. In doing so the Department will have accomplished the primary objective of this change in the regulations, which is to ensure the safety of all inmates, correctional personnel, and the general public. Additionally, this regulatory change will now correlate the Department’s regulations for applying an “R” suffix to an inmate’s custody, to the PC requirement that sex offenders guilty of specific offenses must register as a sex offender for life.

With respect to the Department's identification and treatment of mentally ill inmates, see **Commenter #2, Response C.**

Finally, it is not within the purview of the Department to determine the guilt or innocence of individuals remanded to the Department's care. The Department is responsible for housing individuals that have been determined to be felons by the courts and committed to state prison.

Comment F: Commenter states that inmates with the "R" suffix custody designation will be beaten, maimed or killed by other inmates on the yard, resulting in great fiscal cost to the taxpayers and immeasurable human toll. Inmates that are assigned an "R" suffix must be given their own yard.

Accommodation: None.

Response F: See Commenter #2, Response A.

Comment G: Commenter states that many inmates that have been convicted of a sex offense are connected to families they need to get to when they finish serving their time. But they will need to deal with the scrutiny of having to register as a sex offender, a mark that destroys them for life. How can they become productive members of society when every effort is being made to harm them?

Accommodation: None.

Response G: See Commenter #2, Response B.

Comment H: Commenter questions whether this change in the regulations will affect all persons convicted of a sex crime, or only child molesters.

Accommodation: None.

Responses H: See Commenter #2, Response C.

Comment I: Commenter disagrees that any inmate found guilty of a PC 290 offense while incarcerated will also be assigned an "R" suffix for the remainder of their term, and will be required to register as a sex offender once paroled from prison. Due to the administrative nature of its disciplinary hearing process, the Department does not have the same authority as the court in convicting someone of a PC 290 offense and thus requiring registration.

Accommodation: None.

Response I: An inmate who has committed a sex-related offense in prison which is equivalent to a sex offense listed in PC Section 290 shall have an "R" suffix evaluation conducted by a classification committee. An "R" suffix custody designation may also be removed by a classification committee, if it has been determined that the "R" suffix is not warranted. Inmates who are found guilty in a departmental administrative disciplinary hearing are not required to register as a sex offender pursuant to PC 290, unless they are prosecuted by the local District Attorney and found guilty of a registerable offense.

Comment J: Commenter notes that the purpose of having the "R" suffix custody designation is for easy recognition by staff, to not be assigned to a job where the public is involved, and to be given higher points when entering prison so as to be ineligible for a low level clearance job.

Accommodation: None.

Response J: The Department contends that the commenter is correct in noting that the primary objective of this proposed change to the regulations is to ensure the safety of inmates, correctional personnel, and the general public. Also, the purpose for affixing the "R" suffix to

an inmate's custody designation is to assist staff in identifying inmates with a history of specific sex offenses and to limit the inmate's opportunity to victimize other inmates, staff, or visitors, or to be placed in a work assignment that places them in direct contact with the public. However, the Department does not assess additional classification points to an inmates classification score due to a conviction for a sex offense when entering the prison system.

Comment K: Commenter states that the application of an "R" suffix for any inmate will now cause that inmate undue recognition to ensure deliberate gross punishment.

Accommodation: None.

Response K: See Commenter #2, Comment A.

Comment L: Commenter states that all inmates that are classified as mentally ill in the prison system and even the county jails should be released from incarceration and treated in hospitals.

Accommodation: None.

Response L: The comment regards an issue of public policy over which the Department does not have authority. The Department contends that although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3). However, the comment is either insufficiently related to the specific action proposed or of such a generalized or unsubstantiated nature that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #4:

Comment A: Commenter acknowledges that an inmate convicted of a PC 290 offense while in prison will be assigned an "R" suffix custody designation while in prison. Commenter does not agree that a mere administrative procedural process could result in a guilty disposition of a PC 290 offense without being pursued through the courts.

Accommodation: None.

Response A: See Commenter #3, Response I.

Comment B: Commenter questions whether an individual that was found guilty of a PC 290 offense while incarcerated would be required to register as a sex offender, without the involvement of a Court proceeding.

Accommodation: None.

Response B: The Department contends that inmates who are found guilty of a sex offense in a Departmental administrative disciplinary hearing are not required to register as a sex offender pursuant to PC Section 290, unless they are prosecuted by the local District Attorney and found guilty of a registrable offense. For example, if an inmate commits an act of Indecent Exposure, that inmate will be issued a Division D Rules Violation Report (RVR), and the case would not be referred to the District Attorney. However, if the inmate were committing multiple acts of Indecent Exposure while incarcerated, or if the inmate had a prior conviction of a sex offense, the inmate would be issued a higher level Division B RVR which would be referred to the District Attorney for possible misdemeanor or felony conviction. The case would also be referred to a committee for an evaluation of assigning an "R" suffix custody designation.

Commenter #5:

Comment A: Commenter states that anyone coming into the prison system that has been convicted of a PC 290 offense will automatically be assigned an “R” suffix custody designation, as will anyone found guilty of a sex offense while incarcerated.

Accommodation: None.

Response A: See Commenter #2, Response A, and Commenter #4, Response B.

Comment B: Commenter states that inmates with an “R” suffix would be assigned a higher number of classification score points because of that custody designation, preventing them from getting low level clearance work assignments.

Accommodation: None.

Response B: The Department agrees that the application of an “R” suffix custody designation would prevent an inmate from being assigned many low level clearance work assignments, notably those where there would be contact with the public. An inmate’s classification score would be impacted only if the inmate received a rules infraction while incarcerated; unfavorable behavioral points are assessed for all rules infractions.

Comment C: Commenter states that many more inmates will be assigned an “R” suffix, even if their original admission to prison was not for a sex crime pursuant to PC 290.

Accommodation: None.

Response C: See Commenter #2, Response A, and Commenter #4, Response B.

Comment D: Commenter states that assigning the “R” suffix will be dangerous for those inmates guilty of sex crimes but just wanting to keep a low profile in prison. This type of policy ignores any possibility of rehabilitation, and is highly punitive in nature.

Accommodation: None.

Response D: See Commenter #1, Response A, Commenter #2, Responses A and B, and Commenter #3, Response A.

Commenter #6:

Comment A through C mirror Comments made by Commenter #2.

Accommodation: None.

Response A through C mirror Responses A through C to Commenter #2.

Comment D: Commenter states that any inmate found guilty of a PC 290 offense while incarcerated will also be assigned an “R” suffix for the remainder of their term, and will be required to register as a sex offender once paroled from prison. Due to the administrative nature of its disciplinary hearing process, the Department does not have the same authority as the court in convicting someone of a PC 290 offense and thus requiring registration.

Accommodation: None.

Response D: See Commenter #3, Response I.

Comment E: Commenter questions whether an inmate convicted of a sex offense while incarcerated would be required to register as a sex offender for the rest of their life.

Accommodation: None.

Response E: See Commenter #4, Response B.

Comment F: Commenter states that inmates with an “R” suffix would be assigned a higher number of classification score points because of that custody designation, preventing them from getting low level clearance work assignments.

Accommodation: None.

Response F: See Commenter #5, Response B.

Comment G: Commenter states that assigning the “R” suffix will be dangerous for those inmates guilty of sex crimes but just wanting to keep a low profile in prison. This type of policy ignores any possibility of rehabilitation, and is highly punitive in nature.

Accommodation: None.

Response G: See Commenter #1, Response A, Commenter #2, Responses A and B, and Commenter #3, Response A.

Comment H: Commenter questions how a failed agency that has created more mental illness than it has ever cured, an agency who makes people sicker than before they were incarcerated, be trusted to heal those that need it.

Accommodation: None.

Response H: See Commenter #2, Response B.

Commenter #7:

Comment A: Commenter questions why not simply substitute a bulls-eye?

Accommodation: None.

Response A: See Commenter #2, Response A.

Commenter #8:

Comment A: Commenter states that assigning an “R” suffix to an inmate’s custody designation is like assigning a death sentence.

Accommodation: None.

Response A: See Commenter #2, Response A.

Comment B: Commenter states that the Department should not build its own mental hospitals. Mental patients need medical staff and not prison guards.

Accommodation: None.

Response B: The Department partially agrees. However, a number of years ago the State decided to close most of its mental hospitals. **Also, see Commenter #2, Response C.**

Commenter #9:

Comment A: Commenter states that the State has a responsibility to keep inmates safe.

Accommodation: None.

Response A: See Commenter #2, Response A.

